

1 James W. Ahn (SB#243335)
2 James@ahniplaw.com
3 AHN IP LAW
4 12100 Wilshire Boulevard, Suite 807
5 Los Angeles, California 90025
6 Tel: (424) 326-3171
7 Fax: (310) 943-2216

8
9 Attorney for Defendant/Counter-claimants
10 NEW MOA COLLECTION &
11 WON YOUNG CHANG

12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**
15 **WESTERN DIVISION**

16 MOA MOA, INC., a California
17 corporation,

18 Plaintiff,

19 v.
20 NEW MOA COLLECTION, a
21 California corporation, and DOES 1
22 through 10, inclusive,

23 Defendant.

24 NEW MOA COLLECTION, a California
25 corporation, and WON YOUNG CHANG
26 an individual d/b/a MOA COLLECTION,

27 Counter-claimants,

28 v.
29 MOA MOA, INC., a California
30 corporation,

31 Counter-defendant.

32 Case No: 18-CV-06110-MWF-JCx

33 **Hon. Jacqueline Chooljian**

34 **PROTECTIVE ORDER**

1 1. A. PURPOSES AND LIMITATIONS

2 As the parties have represented that discovery in this action is likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than prosecuting
5 this litigation may be warranted, this Court enters the following Protective Order. This
6 Order does not confer blanket protections on all disclosures or responses to discovery.
7 The protection it affords from public disclosure and use extends only to the limited
8 information or items that are entitled to confidential treatment under the applicable legal
9 principles. Further, as set forth in Section 12.3, below, this Protective Order does not
10 entitle the parties to file confidential information under seal. Rather, when the parties
11 seek permission from the court to file material under seal, the parties must comply with
12 Civil Local Rule 79-5 and with any pertinent orders of the assigned District Judge and
13 Magistrate Judge.

14 B. GOOD CAUSE STATEMENT

15 In light of the nature of the claims and allegations in this case and the parties'
16 representations that discovery in this case will involve the production of confidential
17 records, and in order to expedite the flow of information, to facilitate the prompt
18 resolution of disputes over confidentiality of discovery materials, to adequately protect
19 information the parties are entitled to keep confidential, to ensure that the parties are
20 permitted reasonable necessary uses of such material in connection with this action, to
21 address their handling of such material at the end of the litigation, and to serve the ends
22 of justice, a protective order for such information is justified in this matter. The parties
23 shall not designate any information/documents as confidential without a good faith belief
24 that such information/documents have been maintained in a confidential, non-public
25 manner, and that there is good cause or a compelling reason why it should not be part of
26 the public record of this case.

27 ///

28 ///

1 2. DEFINITIONS

2 2.1 Action: The instant action: *Moa Moa, Inc. v. New Moa Collection*, Case
3 No. 18-cv-06110-MWF-JCx.

4 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
5 information or items under this Order.

6 2.3 “CONFIDENTIAL” Information or Items: information (regardless of how it
7 is generated, stored or maintained) or tangible things that qualify for protection under
8 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
9 Statement.

10 2.4 “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” Information
11 or Items: extremely sensitive “CONFIDENTIAL” Information or Items, the disclosure of
12 which to another Party or Non-Party would create a substantial risk of serious harm that
13 could not be avoided by less restrictive means.

14 2.5 Counsel: Outside Counsel of Record and House Counsel (as well as their
15 support staff).

16 2.6 Designating Party: a Party or Non-Party that designates information or
17 items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”
18 or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.”

19 2.7 Disclosure or Discovery Material: all items or information, regardless of the
20 medium or manner in which it is generated, stored, or maintained (including, among
21 other things, testimony, transcripts, and tangible things), that are produced or generated in
22 disclosures or responses to discovery in this matter.

23 2.8 Expert: a person with specialized knowledge or experience in a matter
24 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
25 expert witness or as a consultant in this Action.

26 2.9 House Counsel: attorneys who are employees of a party to this Action.
27 House Counsel does not include Outside Counsel of Record or any other outside counsel.

28 ///

1 2.10 Non-Party: any natural person, partnership, corporation, association, or
2 other legal entity not named as a Party to this action.

3 2.11 Outside Counsel of Record: attorneys who are not employees of a party to
4 this Action but are retained to represent or advise a party to this Action and have
5 appeared in this Action on behalf of that party or are affiliated with a law firm which has
6 appeared on behalf of that party, and includes support staff.

7 2.12 Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.13 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this Action.

12 2.14 Professional Vendors: persons or entities that provide litigation support
13 services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium) and
15 their employees and subcontractors.

16 2.15 Protected Material: any Disclosure or Discovery Material that is designated
17 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
18 ONLY.”

19 2.16 Receiving Party: a Party that receives Disclosure or Discovery Material
20 from a Producing Party.

21 3. SCOPE

22 The protections conferred by this Order cover not only Protected Material (as
23 defined above), but also (1) any information copied or extracted from Protected Material;
24 (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any
25 deposition testimony, conversations, or presentations by Parties or their Counsel that
26 might reveal Protected Material, other than during a court hearing or at trial.

27 ///

28 //

1 Any use of Protected Material during a court hearing or at trial shall be governed
2 by the orders of the presiding judge. This Order does not govern the use of Protected
3 Material during a court hearing or at trial.

4 4. **DURATION**

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in
7 writing or a court order otherwise directs. Final disposition shall be deemed to be the later
8 of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and
9 (2) final judgment herein after the completion and exhaustion of all appeals, rehearings,
10 remands, trials, or reviews of this Action, including the time limits for filing any motions
11 or applications for extension of time pursuant to applicable law.

12 5. **DESIGNATING PROTECTED MATERIAL**

13 5.1 **Exercise of Restraint and Care in Designating Material for Protection.** Each
14 Party or Non-Party that designates information or items for protection under this Order
15 must take care to limit any such designation to specific material that qualifies under the
16 appropriate standards. The Designating Party must designate for protection only those
17 parts of material, documents, items, or oral or written communications that qualify so that
18 other portions of the material, documents, items, or communications for which protection
19 is not warranted are not swept unjustifiably within the ambit of this Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that
21 are shown to be clearly unjustified or that have been made for an improper purpose (e.g.,
22 to unnecessarily encumber the case development process or to impose unnecessary
23 expenses and burdens on other parties) may expose the Designating Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it
25 designated for protection do not qualify for protection, that Designating Party must
26 promptly notify all other Parties that it is withdrawing the inapplicable designation.

27 5.2 **Manner and Timing of Designations.** Except as otherwise provided in this
28 Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or

1 ordered, Disclosure or Discovery Material that qualifies for protection under this Order
2 must be clearly so designated before the material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents,
5 but excluding transcripts of depositions), that the Producing Party affix at a minimum, the
6 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES
7 ONLY” to each page that contains protected material. If only a portion or portions of the
8 material on a page qualifies for protection, the Producing Party also must clearly identify
9 the protected portion(s) (e.g., by making appropriate markings in the margins).

10 A Party or Non-Party that makes original documents available for inspection need
11 not designate them for protection until after the inspecting Party has indicated which
12 documents it would like copied and produced. During the inspection and before the
13 designation, all of the material made available for inspection shall be deemed
14 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
15 copied and produced, the Producing Party must determine which documents, or portions
16 thereof, qualify for protection under this Order. Then, before producing the specified
17 documents, the Producing Party must affix the “CONFIDENTIAL”, or “HIGHLY
18 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” legend to each page that contains
19 Protected Material. If only a portion or portions of the material on a page qualifies for
20 protection, the Producing Party also must clearly identify the protected portion(s) (e.g.,
21 by making appropriate markings in the margins).

22 (b) for testimony given in depositions that the Designating Party identifies on
23 the record, before the close of the deposition as protected testimony.

24 (c) for information produced in some form other than documentary and for any
25 other tangible items, that the Producing Party affix in a prominent place on the exterior of
26 the container or containers in which the information is stored the legend
27 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.”

28 ///

If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37-1 et seq.

6.3 The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn the confidentiality designation, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below.

///

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
5 ordered by the court or permitted in writing by the Designating Party, a Receiving Party
6 may disclose any information or item designated “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well as
8 employees of said Outside Counsel of Record to whom it is reasonably necessary to
9 disclose the information for this Action;

10 (b) the officers, directors, and employees (including House Counsel) of the
11 Receiving Party to whom disclosure is reasonably necessary for this Action;

12 (c) Experts (as defined in this Order) of the Receiving Party to whom
13 disclosure is reasonably necessary for this Action and who have signed the
14 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) private court reporters and their staff to whom disclosure is reasonably
17 necessary for this Action and who have signed the “Acknowledgment and Agreement to
18 Be Bound” (Exhibit A);

19 (f) professional jury or trial consultants, mock jurors, and Professional Vendors
20 to whom disclosure is reasonably necessary for this Action and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses, and attorneys for witnesses, in the
25 Action to whom disclosure is reasonably necessary provided: (1) the deposing party
26 requests that the witness sign the “Acknowledgment and Agreement to Be Bound”
27 (Exhibit A); and (2) they will not be permitted to keep any confidential information
unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless

otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court and its personnel;

(d) private court reporters and their staff to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(e) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(g) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

///

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
2 IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY,”
6 that Party must:

- 7 (a) promptly notify in writing the Designating Party. Such notification shall
8 include a copy of the subpoena or court order unless prohibited by law;
9 (b) promptly notify in writing the party who caused the subpoena or order to
10 issue in the other litigation that some or all of the material covered by the subpoena or
11 order is subject to this Protective Order. Such notification shall include a copy of this
12 Protective Order; and
13 (c) cooperate with respect to all reasonable procedures sought to be pursued by
14 the Designating Party whose Protected Material may be affected.

15 If the Designating Party timely seeks a protective order, the Party served with the
16 subpoena or court order shall not produce any information designated in this action as
17 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -- ATTORNEYS’ EYES ONLY”
18 before a determination by the court from which the subpoena or order issued, unless the
19 Party has obtained the Designating Party’s permission, or unless otherwise required by
20 the law or court order. The Designating Party shall bear the burden and expense of
21 seeking protection in that court of its confidential material and nothing in these
22 provisions should be construed as authorizing or encouraging a Receiving Party in this
23 Action to disobey a lawful directive from another court.

24 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
25 IN THIS LITIGATION

26 (a) The terms of this Order are applicable to information produced by a Non-
27 Party in this Action and designated as “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL -- ATTORNEYS’ EYES ONLY.” Such information produced by

1 Non-Parties in connection with this litigation is protected by the remedies and relief
2 provided by this Order. Nothing in these provisions should be construed as prohibiting a
3 Non-Party from seeking additional protections.

4 (b) In the event that a Party is required, by a valid discovery request, to
5 produce a Non-Party's confidential information in its possession, and the Party is subject
6 to an agreement with the Non-Party not to produce the Non-Party's confidential
7 information, then the Party shall:

8 (1) promptly notify in writing the Requesting Party and the Non-Party that
9 some or all of the information requested is subject to a confidentiality agreement with a
10 Non-Party;

11 (2) promptly provide the Non-Party with a copy of the Protective Order in
12 this Action, the relevant discovery request(s), and a reasonably specific description of the
13 information requested; and

14 (3) make the information requested available for inspection by the Non-
15 Party, if requested.

16 (c) If a Non-Party represented by counsel fails to commence the process called
17 for by Local Rules 45-1 and 37-1, et seq. within 14 days of receiving the notice and
18 accompanying information or fails contemporaneously to notify the Receiving Party that
19 it has done so, the Receiving Party may produce the Non-Party's confidential information
20 responsive to the discovery request. If an unrepresented Non-Party fails to seek a
21 protective order from this court within 14 days of receiving the notice and accompanying
22 information, the Receiving Party may produce the Non-Party's confidential information
23 responsive to the discovery request. If the Non-Party timely seeks a protective order, the
24 Receiving Party shall not produce any information in its possession or control that is
25 subject to the confidentiality agreement with the Non-Party before a determination by the
26 court unless otherwise required by the law or court order. Absent a court order to the
27 contrary, the Non-Party shall bear the burden and expense of seeking protection in this
28 court of its Protected Material.

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
3 Protected Material to any person or in any circumstance not authorized under this
4 Protective Order, the Receiving Party must immediately (a) notify in writing the
5 Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all
6 unauthorized copies of the Protected Material, (c) inform the person or persons to whom
7 unauthorized disclosures were made of all the terms of this Order, and
8 (d) request such person or persons to execute the “Acknowledgment and Agreement to
9 Be Bound” (Exhibit A).

10 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
11 PROTECTED MATERIAL

12 When a Producing Party gives notice to Receiving Parties that certain inadvertently
13 produced material is subject to a claim of privilege or other protection, the obligations of
14 the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B).
15 This provision is not intended to modify whatever procedure may be established in an e-
16 discovery order that provides for production without prior privilege review. Pursuant to
17 Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the
18 effect of disclosure of a communication or information covered by the attorney-client
19 privilege or work product protection, the parties may incorporate their agreement into this
20 Protective Order.

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
23 person to seek its modification by the Court in the future.

24 12.2 Right to Assert Other Objections. No Party waives any right it otherwise
25 would have to object to disclosing or producing any information or item on any ground
26 not addressed in this Protective Order. Similarly, no Party waives any right to object on
27 any ground to use in evidence of any of the material covered by this Protective Order.

28 ///

1 12.3 Filing Protected Material. A Party that seeks to file under seal any
2 Protected Material must comply with Civil Local Rule 79-5 and with any pertinent orders
3 of the assigned District Judge and Magistrate Judge. Protected Material may only be
4 filed under seal pursuant to a court order authorizing the sealing of the specific Protected
5 Material at issue. If a Party's request to file Protected Material under seal is denied by
6 the court, then the Receiving Party may file the information in the public record unless
7 otherwise instructed by the court.

8 13. FINAL DISPOSITION

9 After the final disposition of this Action, as defined in Section 4, within 60 days of
10 a written request by the Designating Party, each Receiving Party must return all Protected
11 Material to the Producing Party or destroy such material. As used in this subdivision, "all
12 Protected Material" includes all copies, abstracts, compilations, summaries, and any other
13 format reproducing or capturing any of the Protected Material. Whether the Protected
14 Material is returned or destroyed, the Receiving Party must submit a written certification
15 to the Producing Party (and, if not the same person or entity, to the Designating Party) by
16 the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected
17 Material that was returned or destroyed and (2) affirms that the Receiving Party has not
18 retained any copies, abstracts, compilations, summaries or any other format reproducing
19 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are
20 entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and
21 hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits,
22 expert reports, attorney work product, and consultant and expert work product, even if
23 such materials contain Protected Material. Any such archival copies that contain or
24 constitute Protected Material remain subject to this Protective Order as set forth in
25 Section 4.

26 ///

27 ///

28 ///

14. Any violation of this Order may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions.

IT IS SO ORDERED.

DATED: December 12, 2018

/s/
Honorable Jacqueline Chooljian
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for the Central District of California on December 12, 2018 in the case of *Moa Moa, Inc. v. New Moa Collection*, Case No. 18-cv-06110-MWF-JCx. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action. I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Protective Order.

Date:

City and State where sworn and signed: _____

Printed name:

Signature: